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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

CAPANA SWISS ADVISORS AG, a Swiss
corporation; AMERIMARK
AUTOMOTIVE AG, a Swiss corporation,

Plaintiffs,

vs.

RYMARK, INC., a Utah corporation;
NICHOLAS THAYNE MARKOSIAN, an
individual; JOHN KIRKLAND, an individual;
and VICKY SMALL, an individual,

Defendants.

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' SHORT FORM
MOTION TO QUASH IMPROPER
DEPOSITION NOTICE AND ADDRESS
PLAINTIFFS' REFUSAL TO AWAIT
COURT ADJUDICATION OF
PREVIOUSLY FILED MOTION TO
QUASH**

Case No. 2:23-cv-00467

Judge: Hon. Ted Stewart

Magistrate Judge: Hon. Cecilia M. Romero

Defendants' latest Motion to Quash ("Motion") is a further transparent attempt to prevent Plaintiffs from obtaining relevant and proper third-party discovery. On August 4, Defendants demanded a protective order regarding the Oak Street Funding ("Oak Street") and LPHH

document subpoenas. (ECF 128). On August 14, Plaintiffs served a *deposition* subpoena for Oak Street employee William Bowers, which did not request that Mr. Bowers produce documents. Plaintiffs' deposition subpoena is separate from the document subpoena at issue in Defendants' Motion for Protective Order. Plaintiffs were not required to await the outcome of Defendants' motion regarding their document subpoenas to before serving the subpoena Mr. Bowers' deposition. Indeed, Defendants do not and cannot present any authority to the contrary. Defendants' latest Motion should be denied.

First, Defendants lack standing to object to Mr. Bower's deposition subpoena. "Generally, a motion to quash a subpoena may only be made by the party to whom the subpoena is directed." *Monroe v. FinWise Bank*, No. 221CV00042JNPDAO, 2021 WL 5926416, at *2 (D. Utah Dec. 15, 2021) (unpublished). "The exception is where the party seeking to challenge the subpoena has a personal right or privilege with respect to the subject matter requested in the subpoena." *Id.* Defendants failed to allege that they have any "personal right or privilege with respect to the subject matter requested in the" deposition subpoena to Mr. Bowers such that they have standing to bring this Motion. Defendants also fail to demonstrate how arguments related to Plaintiffs' supposed "discovery abuse" give them standing to move to quash Mr. Bowers' deposition. *See, e.g., Monroe v. FinWise Bank*, No. 221CV00042JNPDAO, 2021 WL 5926416, at *2 (D. Utah Dec. 15, 2021) ("[E]ven where a party has standing to quash a subpoena based on privilege or a personal right, he or she lacks standing to object on the basis of undue burden, and 'on the grounds of overly broad and relevance.'").

Second, Defendants' deficient notice argument fails. Plaintiffs served Oak Street's counsel with a deposition subpoena for Mr. Bowers on August 14, 2024.¹ Plaintiffs also served notice of the deposition on Defendants' counsel pursuant to Rule 30(b)(1). That notice was not meant "to demand a deposition," but rather, the notice was meant to give Defendants "reasonable

¹ Plaintiffs will provide this subpoena to the Court upon request.

written notice...[of] the time and place of the deposition.” Fed. R. Civ. P. 30(b)(1). Given that the subpoena did not command production of documents, Plaintiffs were not required by the federal or local rules to forward a copy of the deposition subpoena to Defendants or to provide them a courtesy notice prior to serving the same.² See DUCivR 45-1. All the rules require is that Plaintiffs provide notice to the Defendants of the time/place of the deposition, which they did on August 19. Accordingly, Defendants’ Motion is baseless and should be denied.

DATED: September 5, 2024

VENABLE LLP
Sarah E. Diamond (*Admitted Pro Hac Vice*)

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By: /s/ Erik A. Christiansen

*Attorneys for Plaintiffs Capana Swiss
Advisors AG and AmeriMark Automotive AG*

² Defendants are clearly aware of this nuance, given that Defendants’ counsel served third-party Orié Rechtman with a deposition subpoena without first notifying Plaintiffs.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 2024, I caused a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS' SHORT FORM MOTION TO QUASH IMPROPER DEPOSITION NOTICE AND ADDRESS PLAINTIFFS' REFUSAL TO AWAIT COURT ADJUDICATION OF PREVIOUSLY FILED MOTION TO QUASH** to be emailed to the below and to be filed on CM/ECF and accordingly electronically served to the parties of record.

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/s/ Hannah Ector

Hannah Ector